

FILED

JUN 14 2006

U.S. DISTRICT COURT
ARLEN B. COYLE, CLERK
By *[Signature]* Deputy

**IN THE CHANCERY COURT OF DESOTO COUNTY
STATE OF MISSISSIPPI**

**KEVIN HICKS and
SAFeway INSURANCE COMPANY**

PLAINTIFFS

VERSUS

CIVIL ACTION NO. 05-02-0209

2:06cv103-P-A

**MARY STEPHENS, RUTH CARTNEY,
EVELYN HEALD, JIMMY RAMSEY, VIRGINIA
RAMSEY, MARGIE HAYS, ALFRED HAYS,
DOUG GREAR, DOROTHY FREESE, DORIS
NOLL, SCOTT TUSLER, KATHY TUSLER,
MICHAEL WILD, MARY WILD, HOLLIS
HERBISON, ALYCE HERBISON, PAT ALDERSON,
JANET SMITH, SHEILA BROWN, BARB NELLES,
LORRAIN DRESS, MARY BLOCK, DAVID BLOCK,
EMILY REEVES, DONNA BERGER, JUDY ARENDORF,
ED ARENDORF, JUDY MOORE, JOAN NELSON,
AMERICAN FAMILY INSURANCE,
LANCER INSURANCE COMPANY, ALLIED INSURANCE,
MEDICARE, WELLMARK-BLUE CROSS BLUE SHIELD OF IOWA,
RAY G. BITSWORTH, JR., BRYAN BARBER,
RIVER TRAILS TRANSIT, JEAN GREAR, JACKIE CRAWFORD,
LYNN FISTLER, LEONARD DRESS, SUE TOMBLINSON,
BEV KRUNWIEDE, GRINNELL MUTUAL REINSURANCE CO.,
MARION CHIROPRACTIC CENTER, HARTFORD
FINANCIAL SERVICES GROUP, INC.,
CAMBRIDGE INTERGRATED SERVICES
GROUP, INC. f/k/a MARTIN BOYER CO., and
COMBINED SPECIALTY INSURANCE COMPANY
f/k/a VIRGINIA SURETY COMPANY**

DEFENDANTS

AMENDED COMPLAINT FOR INTERPLEADER

COME NOW the Plaintiffs, Kevin Hicks and Safeway Insurance Company, by and through counsel, pursuant to Rule 22 of the Mississippi Rules of Civil Procedure, and files this their *Amended Complaint for Interpleader*, and in support thereof would show unto the Court the following:

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WE DAVIS, CLERK

Exhibit 1

1.

Plaintiff, Kevin Hicks is an adult resident citizen of the State of Mississippi.

2.

Plaintiff, Safeway Insurance Company, is a non-resident insurance company doing business in the State of Mississippi. At all times relevant hereto, Safeway Insurance Company has been licensed to do business in the State of Mississippi and in fact has been doing business in the State of Mississippi.

3.

Defendant, Evelyn Heald, is an adult resident citizen of the State of Iowa, located at 601 South Avenue, Madison, Illinois 62060 or 321 West Jefferson Street, Washington, Iowa 52353.

4.

Defendant, Virginia Ramsey, is an adult resident citizen of the State of Iowa, located at 1020 1st Street, Center Point, Iowa 52213.

5.

Defendant, Douglas (Doug) Greer is an adult resident citizen of the State of Iowa, located at 616 N. Bluff Boulevard, Clinton, Iowa 52732.

6.

Defendant, Dorothy Freese, is an adult resident citizen of the State of Iowa, located at 313 13th Street, Cedar Rapids, Iowa 52404.

7.

Defendant, Mary Block, is an adult resident citizen of the State of Iowa, located at 2258 Seippel Road, Dubuque, Iowa 52002.

8.

Defendant, David Block, is an adult resident citizen of the State of Iowa, located at 2258 Seippel Road, Dubuque, Iowa 52002.

9.

Defendant, Joan Nelson, is an adult resident citizen of the State of Iowa, located at 1232 South 8th Street, Clinton, Iowa 52732.

10.

Defendant, Lancer Insurance Company, is a non-resident insurance company located at 6563 Wilson Mills Road, Suite 101, Mayfield Village, Ohio 44143.

11.

Defendant, Medicare, is a governmental entity and may be served with process through the Office of the Attorney General for the State of Mississippi at Post Office Box 220, Jackson, Mississippi 39205.

12.

Defendant, Wellmark-Blue Cross Blue Shield of Iowa, is a non-resident Iowa corporation and may be served with process through its registered agent, Mr. F. Joseph Du Bray, 636 Grand Avenue, Des Moines, Iowa 50309.

13.

Defendant, Bryan Barber, is an adult resident citizen of the State of Mississippi, located at 638 Black Hawk Drive, Hernando, Mississippi 38632.

14.

Defendant, Jean Grear, is an adult resident citizen of the State of Iowa, located at 616 N. Bluff Boulevard, Clinton, Iowa 52732.

15.

Defendant, Jackie Crawford, is an adult resident citizen of the State of Illinois.

16.

Defendant, Lynn Fistler, is an adult resident citizen of the State of Illinois, located at Post Office Box 99, Saint David, Illinois 61563-0099.

17.

Defendant, Leonard (Lenny) Dress, is an adult resident citizen of the State of Iowa, located at 645 Gillispie Street, Dubuque, Iowa 52001.

18.

Defendant, Sue Tomblinson, is an adult resident citizen of the State of Illinois.

19.

Defendant, Bev Krunwiede, is an adult resident citizen of the State of Illinois.

20.

Defendant Grinnell Mutual Reinsurance Company, is a non-resident insurance company located at 4215 Highway 146, Grinnell, Iowa 50112.

21.

Defendant, Marion Chiropractic Center, is a non-resident company with its principal place of business located at 360 7th Avenue, Marion, Iowa 52302

22.

Defendant, Combined Specialty Insurance Company f/k/a Virginia Surety Company, is a non-resident insurance company located at 200 East Randolph Street, Chicago, Illinois 60601.

23.

Defendant, Hartford Financial Services Group, Inc., is a non-resident insurance company located at Post Office Box 6894, Indianapolis, Indiana 46268.

24.

Defendant, Cambridge Integrated Services Group, Inc. f/k/a Martin Boyer Co., is a non-resident insurance company located at 2910 Westown Parkway, Suite 102, West Des Moines, Iowa.

25.

A default judgment was previously entered against the following named defendants by order of this Court entitled *Order Granting Default Judgment as to Certain Named Defendants*, dated September 19, 2005, and filed of record with this Court on September 20, 2005, for failure to answer or otherwise respond to the original Complaint for Interpleader filed in this cause of action on February 9, 2005: Mary Stephens, Ruth Cartney, Margie Hays, Alfred Hays, Doris Noll, Scott Tusler, Kathy Tusler, Michael Wild, Mary Wild, Hollis Herbison, Alyce Herbison, Pat Alderson, Janet Smith, Lorrain Dress, Emily Reeves, Donna Berger, Judy Arendorf, Ed Arendorf, Judy Moore, Allied Insurance, Ray G. Bigsworth and River Trails Transit. Pursuant to the filing of the *Order Granting Default Judgment as to Certain Named Defendants* in this cause of action, the above referenced twenty-two (22) named Defendants are no longer actively participating in this suit, and therefore no further service of pleadings upon them in this matter is required.

26.

A default judgment was previously entered against the following named defendants by order of this Court entitled *Order Granting Default Judgment as to Certain Named Defendants*, dated September 19, 2005, and filed of record with this Court on September 20, 2005, for failure to answer or otherwise respond to the original Complaint for Interpleader filed in this cause of action on February 9, 2005, and after having submitted written waivers to any claims as a part of this cause of action: James (Jimmy) Ramsey, Sheila (Shelia) Brown, and Barb (Barbara) Nelles. Pursuant to the filing of the *Order Granting Default Judgment as to Certain Named Defendants* in this cause of action, the above referenced three (3) named Defendants are no longer actively participating in this suit, and therefore no further service of pleadings upon them in this matter is required.

27.

Defendant, American Family Insurance, was dismissed from this cause by virtue of an *Agreed Order of Dismissal* filed in this cause of action on or about May 2, 2005.

28.

The following potential claimants to said interpled funds previously submitted claims, but have since decided to waive any claim to said funds, and have therefore executed the appropriate Ratification Agreement, Agreed Order to Amend Complaint, and/or waiver letter (which have all been previously filed of record with the Court in this cause of action): Blue Cross/Blue Shield of Mississippi (as to Bryan Barber); The Rawlings Company aka Rawlings & Associates, PLLC, and Aetna Life Insurance Company as claims administrator for the Rockwell International Corporation's self insured health plan (as to Virginia Ramsey); State Farm Mutual Automobile Insurance Company (as per its subrogation interests pertaining to its insured, Alfred and Margie Hays, only); and State

Farm Mutual Automobile Insurance Company (as per its subrogation interests pertaining to its insured, Judy Moore, only).

29.

On or about August 17, 2002, Kevin Hicks, Jr. was operating a vehicle which was involved in a motor vehicle incident with a bus being operated by Ray G. Bitsworth, Jr. and owned by River Trails Transit. The accident occurred at the intersection of Highway 302 and Interstate Boulevard in the City of Horn Lake, Desoto County, Mississippi. At the time of the subject incident, the following individuals were passengers in the River Trails Transit bus being operated by Ray G. Bitsworth, Jr.: Mary Stephens, Ruth Cartney, Evelyn Heald, James (Jimmy) Ramsey, Virginia Ramsey, Margie Hays, Alfred Hays, Douglas (Doug) Gear, Dorothy Freese, Doris Noll, Scott Tusler, Kathy Tusler, Michael Wild, Mary Wild, Hollis Herbison, Alyce Herbison, Pat Alderson aka Pat Edison, Janet Smith, Jackie Crawford, Sheila (Shelia) Brown, Barb (Barbara) Nelles, Lynn Fistler, Lorrain Dress, Leonard (Lenny) Dress, Mary Block, David Block, Emily Reeves, Sue Tomblinson, Donna Berger, Judy Arendorf, Ed Arendorf, Bev Krunwiede, Judy Moore and Joan Nelson.

Further, Defendant, Bryan Barber, was a front seat passenger in the vehicle being driven by Plaintiff, Kevin Hicks.

30.

Personal injuries were or may have been sustained by the named Defendants as a result of this motor vehicle accident.

31.

At the time of the subject motor vehicle incident, Kevin Hicks, Jr. had automobile liability insurance coverage with Safeway Insurance Company that is applicable to this incident. The named insured under Safeway Insurance Company policy number MS 206278 is Kevin Hicks, Jr. The policy provided bodily injury liability coverage with limits of \$10,000.00 per person and \$20,000.00 per accident.

32.

Due to the multiple claimants involved in this incident, \$20,000.00 is available for full, final and absolute settlement and release from any further liability by and from the named Defendants.

33.

In view both of the claims and potential claims of the various claimants as a result of this motor vehicle accident and the policy limits being only \$20,000.00, Plaintiff cannot determine what sums, if any, each of the claimants are entitled without the determination of this Court and cannot pay any part of the insurance coverage without danger of being held to have done so improperly.

34.

Safeway Insurance Company and its insured, Kevin Hicks, Jr., wish to tender the policy limits of \$20,000.00 in an effort to fully and finally settle and resolve any claims or potential claims by or from any of the listed Defendants to this action. Safeway Insurance Company previously requested permission, via its *Motion for Leave to Deposit Funds* noticed for hearing on September 19, 2005, to deposit into the registry of the Court in an interest bearing account for the benefit of all named Defendants, the sum of \$20,000.00, plus accumulated interest, which is the total available policy amount, some portion of which each named Defendant may be entitled under the referenced

policy with Safeway Insurance Company. Safeway Insurance Company would further state that it already paid the sum of \$20,000.00, plus accumulated interest, for a total sum of **\$24,839.45**, into the Court, pursuant to the order of this Court entitled ***Order Granting Leave To Deposit Funds***, dated September 19, 2005, and filed of record with this Court on September 20, 2005.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs, Kevin Hicks and Safeway Insurance Company, pray as follows:

1. That the above-referenced Defendants are adverse Claimants to the benefit of the fund made available by this procedure;
2. That the Clerk of this Court promptly and properly invest the policy limit funds plus accumulated interest, previously deposited herein by the Plaintiffs, in the amount of **\$24,839.45**, so that interest for the benefit of the Interpleaders may accrue;
3. That this Court adjudicate that the amount deposited into the registry of this Court, as aforesaid, is the total extent of Plaintiffs' liability insurance coverage under the aforesaid insurance policies;
4. That process issue for all of the remaining Defendants requiring each of said Interpleader Defendants to appear and answer this Complaint on or before the thirtieth day after service of process;
5. That the Interpleader Defendants be required to assert their respective claims to the fund paid into the registry of the Court and settle among themselves their rights or claims to the aforesaid benefits;
6. That this Court issue an Order of Injunction enjoining and restraining said Interpleader Defendants, their agents, attorneys or assigns from instituting or prosecuting suit or

proceeding against Plaintiffs in any Court on account of the aforesaid insurance benefits, and in due course said Order of Injunction be made permanent;

7. That each Interpleader Defendant shall execute a Full, Final and Absolute Release for the benefit of each Plaintiff prior to their receipt of any moneys to be paid out of the Interpled funds;

8. That Plaintiffs be discharged from any further liability to the Interpleader Defendants, pursuant to each Release executed by each Interpleader Defendant prior to their receipt of any moneys interpled; and

9. That the Plaintiffs be granted such other and further relief as this Court may deem proper in the premises.

RESPECTFULLY SUBMITTED, this the 21 day of November, 2005.

WEBB, SANDERS & WILLIAMS, P.L.L.C.
363 NORTH BROADWAY
POST OFFICE BOX 496
TUPELO, MISSISSIPPI 38802-0496
(662) 844-2137
PAUL N. JENKINS, JR., MSB #100041
PAIGE C. BUSH, MSB #101072
EMILY M. PARKER, MSB #99221

BY: Emily M. Parker
EMILY M. PARKER

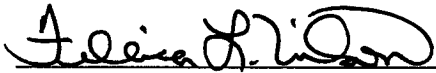
CERTIFICATE OF SERVICE

I, **FELEICA L. WILSON**, Assistant United States Attorney for the Northern District of Mississippi, hereby certify that I have this day served the foregoing **Notice Of Removal To The United States District Court**, by mailing, postage prepaid, a true copy of said **Notice** to:

Honorable Emily M. Parker
Webb, Sanders & Williams, P.L.L.C.
P.O. Box 496
Tupelo, MS 38802
4989 New Hope Road
Columbus, MS 39701

Mr. W.E. (Sluggo) Davis
Chancery Clerk, Desoto County
2535 Hwy. 51 S.
P.O. Box 949
Hernando, MS 38632-0949

This the 14th day of June, 2006.



FELEICA L. WILSON
Assistant U.S. Attorney